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University of Edinburgh, School of Law
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia
(CITSEE)

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Citizenship in Slovenia: the regime of a nationalising or a Europeanising state?

Tomaž Deželan¹

Abstract

This paper attempts a comprehensive account of the Slovenian citizenship regime which has been only partially mapped by national and regional scholarship. The paper draws on a 'nationalising state' approach to demonstrate the nature of membership in a polity that emerged on the ruins of the former Socialist Federative Republic of Yugoslavia (SFRY). By considering the influence of the old regime on the incipient conception of citizenship and the nation-building process, the paper depicts the core dynamic in the field for the last two decades. With explorations of the initial determination of citizenry, the regulation of minorities, dual citizens and refugees, popular attitudes, the political elite's attitudes towards non-ethnic Slovenes, and the impact of Europe, the paper provides evidence for the primacy of an ethno-cultural conception of membership, which is constrained by the embeddedness of the Slovenian citizenship regime within international and supranational frameworks.

Keywords: Slovenia, citizenship, nationalising state, ethno-nationalism, the erased, Roma, minorities, migrations, Europeanisation

Introduction

Citizenship is at the core of every state since it defines the membership of the political community and consequently the nature of the state. Since a transition to democracy inevitably encompasses the redefinition of the political community and the polity itself, national and regional scholars studying topics related to citizenship have frequently focused their attention on Slovenia and other post-communist countries of the region. This repeated attention has been deserved since numerous severe system malfunctions² have violated the basic rights of individuals and failed to protect certain vulnerable groups.

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² E.g. the erasure of residents from other former Yugoslav republics from the register of permanent residents; the unlawful displacement of the Roma family Strojani from their home due to the actions of the local population; slavery-like living conditions and rejection of social rights to Bosnian construction workers on several construction sites in Slovenia; the defective health system for migrant workers, and the tragic death of worker from Kosovo.

Several authors from various disciplines (e.g. Bavcon, Krivic, Jalušič, Dedić, and Zorn) tried to deal with the topic by putting these grave injustices on the public agenda, while state officials have mostly defended the state's positions and measures from professional perspectives.³ As a result, it is not surprising to observe very incoherent reports regarding Slovenian citizenship, particularly when investigating the acute mistreatment of residents from former Yugoslav republics especially in the case of the 'erased'.⁴ Several authors have criticised the restrictive Slovenian conception of citizenship (Zorn 2005; Dedić 2003; Dedić et al. 2003; Krivic 2003; Miklavčič-Predan 1998; Bučar & Miličič 1998), some even going so far as to compare it with apartheid and fascism (Zorn 2006; Gregorčič 2008), while others, although elaborating on its consequent slide towards ethnocentrism, find at least the initial determination of citizenship to be progressive and civic (Medved 2007). Similarly diverse impulses can be identified from various other students of the field (e.g. Pajnik 2007; Zorn 2009; Dedić 2005; Deželan 2007; Deželan & Lajh 2007; Štiks 2006). However, a considerable amount of these differences may be ascribed to different theoretical and methodological frameworks as well as to the disciplinary backgrounds of researchers.

We draw the theoretical foundations of our research from Brubaker's work on the link between citizenship and nationhood (1992, 1994) and on the 'nationalising states' model of the 'New Europe' (1996). The former establishes a clear connection between the definition of membership in a state and the conception of nationhood while the latter provides a framework for the analysis of states that are conceived by their dominant elites as the states of and for a particular ethno-cultural nation whose language, culture, demographic position, economic welfare, and political hegemony must be protected and promoted by the state. By providing evidence for a correlation between citizenship and nationhood we conceive the issues of Slovenian nationhood as an important explanatory variable.⁵ Simultaneously, the 'nationalising state' hypothesis provides the conceptual capacity to examine shifts towards a 'civic' model, something that cannot be explained by looking at the nationhood trajectory, without inherently introducing the 'ethnic-civic' distinctions (Kohn 1944; Smith 1986) that have been fiercely contested during the last two decades (e.g. Brubaker 1999). In contrast with some existing scholarship we therefore consider Slovenian citizenship as a concept of membership in a 'nationalising state', which is continually dominated

³ High-ranking government officials (e.g. Alenka Mesojedec Pervinšek, Slavko Debelak, and Andrej Šter) dominated the discourse regarding citizenship in Slovenia from independence until the late 1990s due to frequent preparations of citizenship legislation as well as their involvement in certain comparative legal studies regarding citizenship and nationality in the former Yugoslav republics.

⁴ We must mention that victims of the administrative erasure that took place in 1992 and the consequent chain of events were not exclusively residents from other Yugoslav republics since the act also victimised some ethnic Slovenes and individuals from 'mixed marriages'.

⁵ Some scholars (e.g. Weil 2002; Joppke 2003) have expressed their reservations regarding the necessity of the link between two concepts of membership. Nevertheless, they acknowledge the empirical possibility of an association between nationhood and citizenship as put forward by Brubaker in his seminal comparative analysis of France and Germany (1992).

by the principles of an ethno-cultural conception of nationhood and is confined by the external environment of the international community.⁶

Mapping Slovenian citizenship through the 'nationalising state' model also allows us to revisit Hayden's (1992) hypothesis of constitutional nationalism⁷ in the Slovenian context since its focus on three aspects (constitutional structure, legislative structure, and bureaucratic practice) foresees the nationalist role of state agencies and officials (Brubaker 1996: 416). Several scholars (e.g. Blitz 2006; Zorn 2009; Mekina 2002; Hayden 1992; Zorn & Lipovec Čebren 2008; Dedić et al. 2003; Zorn 2005; Miklavčič-Predan 1998) have persistently and successfully demonstrated the importance of bureaucratic machinery in order to comprehend the true character of the Slovenian citizenship regime.

For the purposes of our research of Slovenian citizenship we operate citizenship within the analytical framework of the 'citizenship regime', which has gained importance in the last two decades (e.g. Jenson & Phillips 1996; Jenson 2007; Jenson & Papillon 2000; Janoski 1998; Shaw & Štiks 2010; Shaw 2010). In line with Shaw and Štiks' (2010: 5-6) definition of citizenship regime as a concept that encompasses a range of different legal statuses, viewed in their wider political context, which are central to the exercise of civil rights, political membership and full socio-economic membership....certain statuses of internal 'quasi-citizenship' for non-national residents....and of external 'quasi-citizenship' for non-nationals residing outside the territory of the state... [as well as] certain key individual and collective rights... ..which profoundly impact upon the exercise of full civic membership within a society and polity.

Our research into the Slovenian citizenship regime is based on a conventional political science methodology. Special attention is devoted to identifying the mechanisms through which governance and the strategies for it are attempted, resisted, accomplished, and revised with additional foci oriented towards historical and cultural contexts (Scheppelle 2004). We employed elite interviewing and documentary analysis as the core methods of the study, with additional focus on media reporting and content analysis of legislative debates. In our quest for impartiality we complemented official state documents with reporting of other state, international and civil society monitoring institutions. We continue with a review of the different aspects of Slovenian citizenship starting from questions concerning its origins, relationship to nationhood, and initial determination. We then proceed with the politics of citizenship, regulation of dual citizenship, treatment of minorities, and the regulation of statelessness. We conclude with a discussion of various aspects of the Europeanisation of Slovenian citizenship.

⁶ For more on the embeddedness of national constitutional frameworks in international, transnational, and supranational structures see Shaw (2010), Joppke (2003), Brubaker (1996), and Hayden (1992).

⁷ Hayden (1992: 655) defines constitutional nationalism as a constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state.

1. From state-seeking to a state-based agenda: the influence of the conception of nation on incipient citizenship determination in independent Slovenia

1.1 Towards independence: language, nation, and self-determination

When considered in its purest form, citizenship is essentially a membership in a state (Joppke 2003: 429). By becoming members in a state, eventual citizens are granted participation in a political community and co-determination their common fate. The determination of the sovereign political community is of exceptional importance in the context of state-building since the requirement of a cohesive body is often defined as essential. The Slovenian Assembly faced such circumstances on the eve of the Socialist Federative Republic of Yugoslavia (SFRY)'s demise since it had to pave the way for a creation of an independent state⁸ of a profoundly different character. The process began with the introduction of political pluralism in 1988 and resulted in parliamentary democracy.⁹ The problem the Assembly faced was its contested right to self-determination,¹⁰ which was basically a ticket to independence offered to the republics by the 1974 Yugoslav constitution. Several previous attempts to redefine the ossified structure in line with a confederal model had failed due to the Serb nationalist agenda and perceptions of fear by some other republics. These factors narrowed the options for the Slovenian leadership to either pursue the path of national independence or to push for substantial changes to the confederal arrangements (Kučan 1990; Vodopivec 2007; Pirjevec 1995; Pesek 2007; Prunk 1990,

⁸ In Slovenian political discourse the actors engaged in the state-building processes frequently refer to the independence process as a state-building (making of a new state) and a not state-'reforming' process since they consider the process of independence as more than a mere redefinition of the previously existing state and its international recognition and sovereignty. The discourse is primarily centred on the perception of the 'true' founding fathers of Slovenian state (e.g. Bučar 2007) since according to this logic the communists cannot be considered despite their establishment of Slovenia in its present borders after the Second World War as a socialist republic with the right to self-determination.

⁹ The first free democratic elections to the three-chamber Assembly took place in April 1990. The candidates at the elections were for the first time also from the opposition parties and they narrowly defeated the reformed communists (the communist youth and the reformed League of Communists of Slovenia). The former were composed of political parties, which came into existence from May 1988 onwards and were originally established as 'Unions' until legislation provided them with the ability to form political parties. The first elections into the newly formed two-chamber National Assembly of the Republic of Slovenia took place in December 1992.

¹⁰ The issue of self-determination was centred on disagreements regarding who had the right to it, the Yugoslav republics or the six official Yugoslav nations (peoples), and was heavily debated, although in Slovenia it was the least problematic due to a high level of ethnic homogeneity. However, the 'national right to self-determination' (Borak et al. 2005: 1295) was in fact exercised by all legally residing permanent residents of Slovenia at the plebiscite on independence (Mesojevec Pervinšek 1997: 11). Consequently, Slovenian plebiscite may be (and frequently is) interpreted entirely in the Renanian 'referendum' sense, which is still the common understanding among the left-wing intellectuals. This was also the picture portrayed by state authorities in order to give proof of the 'civicness' of Slovenian democracy that needed international recognition.

1992; Borak et al. 2005). The pressure to constitute a solid sovereign body was an imperative of the political and academic establishments (Borak et al. 2005) that wanted to implement an overarching goal of eliminating the constraints of an increasingly powerless Yugoslav structure that began to experience decline after the death of its charismatic leaders and ideologues (e.g. Josip Broz, Tito, Edvard Kardelj). The Slovenian perception of increasing political-ideological regulation and oppression by the centralist forces as well as mounting loans from international financial institutions and their distribution (Prunk 1992: 407) allowed Slovenian political elites to pursue a secessionist agenda and therefore to lay the foundation for the post-independence citizenship regime.

On the basis of his analysis of French and German citizenship laws, Weil (2002) argues against the necessity of a link between citizenship laws and the concept of nation. However, as Brubaker has noted, in practice it is extremely difficult to decouple the two in the Slovenian case (1996: 431). Nevertheless, we can identify the decoupling of the two in certain 'civic' elements of the transitional provisions of the citizenship legislation, which was, according to Mesojedec Pervinšek (1997), in line with the citizenship laws of its time and in compliance with international standards. However, Slovenian citizenship legislation provides several clear links to the concept of nation, as identified by Hayden (1992) in the early 1990s and further elaborated in the literature on the abuses related to the citizenship law (e.g. Medved 2007; Zorn & Lipovec Čebren 2008; Mekina 2002).¹¹ We can identify some of the reasons in the events leading to the proclamation of independence¹² since the political context significantly shaped the conception of Slovenian citizenship and the conception of the nation. The latter became an important axis of accumulation for popular discontent with federal institutions and eventually became one of the key centrifugal forces that led to secession.

We can trace the reasons in the genealogy of the Slovenian 'national question', which is pervaded with pragmatism and lack of confidence due to three surrounding powerful cultural forces (Slavic Balkanism, Mediterranean Italianism, and Central European Germanism). This context drove the Slovenian socio-political elite to flow within different currents and leave an image of discontinuity in the conception of nation seen primarily as a state-creating factor. Nevertheless, regardless of the current, the language proved to be the perennial hallmark in Slovenia nation-building efforts since continuity could be traced only in a cultural sense (Kovačič Peršin 1993: 72). During communist rule a utilitarian and pragmatic view of the

¹¹ For an elaboration of the links between Slovenian citizenship law and the concept of nation see the following sections of the paper.

¹² The Socialist Republic of Slovenia declared its independence from the SFRY on 26 June 1991 on the basis of the obligation deriving from the result of the plebiscite on independence, which was held on 23 December 1990. Consequently the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia and its four state-creation acts (on citizenship, aliens, travel documents, and national border control) were adopted on 25 June 1991, thus creating conditions for the proclamation of independence.

nation as a temporary phenomenon prevailed (e.g. Kardelj 1977) since it served the purpose of reinforcing the socialist project by the communist party elite. However, as the federation increasingly malfunctioned, language came to the forefront of the conception of Slovenian nation once again. Seen as coming under severe pressure by Slovenian intellectuals and the political elite,¹³ language reinforced the ethno-cultural conception of the nation. This eventually significantly narrowed alternatives in the process of determination of members of political community.¹⁴

The Slovenian economy and the financial sector backed up a Slovene 'national agenda'¹⁵ provided by intellectual circles (e.g. academic circles around the scientific journals *Nova Revija*¹⁶ and *Revija 2000* and the dialogue between Kermavner and Kmecl) that began to deliberate publicly on the Slovene 'national question' and alternatives to the Yugoslav status quo. Events that could be interpreted as an attack on the Slovenian language, primarily the 'trial against the four',¹⁷ spurred civil society and triggered the creation of a civil society organisation called the Committee for the Defence of Human Rights.¹⁸ As a result, the Slovenian communist leadership

¹³ The Slovenian cultural and political establishments, the latter also under severe pressure to undertake democratic reforms by the emerging civil society, perceived various actions of the federal authorities or socio-political elites from other republics (e.g. military court trials for Slovenian journalists and civil society activists in the Serbian language, the official language of the army on Slovenian territory, calls for unification of schooling and promotion of the Serbo-Croatian language within federal institutions, and the labelling of Slovenian writers as language separatists by Serbian literary circles) as direct attack on the autonomy of the Slovenian language and the republic.

¹⁴ Parliamentary debates during the preparation of the Citizenship Act focused around the Slovenian nation and the Slovenian language. Even the most contested art. 40 of the Citizenship Act entailed a dilemma about whether to include a language proficiency provision as a condition for acquiring citizenship for the citizens of other republics. Opposition parties of the left that promoted a 'civic' conception of citizenship (reformed communists and socialist youth) eventually managed to negotiate the exemption of the language provision from the article.

¹⁵ E.g. the case of Slovene bank *Ljubljanska Banka*, which was developing an infrastructure abroad because of mistrust in federal institutions (Kavčič 2009).

¹⁶ The most influential was the outline of the conceptual platform for the constitution of a Slovenian sovereign nation within a sovereign state in the 57th number of cultural-literary journal *Nova Revija* in 1987, which also presented a response to the 1986 memorandum on the great-Serbian programme of the Serbian Academy of Sciences and Arts (Prunk 1992: 410). One of the contributions of the platform, written by the eventual first foreign minister of Slovenia, Dimitrij Rupel, even explicitly related the question of language to the question of statehood and proliferation of the Slovenian nation (see Rupel 1987), thus clearly indicating the perception of importance of the language for eventual independent state.

¹⁷ The 'trial against the four' also known as the 'JBTZ trial' refers to the arrest of three Slovenian journalists and an officer of the Yugoslav People's Army by the Army's counterintelligence service under accusations of revealing military secrets. The trial gained mobilisation potential because it was closed to the public, conducted in the official language of the Army (Serbian), and prevented the accused from being defended by a civilian lawyer (Žerdin 2008). The trial ended with the sentencing of four of the defendants to terms of between six months to four years' imprisonment (Fink-Hafner & Robbins 1997: 298).

¹⁸ The Committee became one of the most influential civil society initiatives which eventually counted around 100,000 individuals and more than a thousand organisations. The Committee organised public

became trapped between demands for a civil society¹⁹ and Milošević's aggressive policies. To reaffirm their position in the state and to neutralise ascending opposition, Slovenian communists embraced the nationalist position, primarily by reinforcing the position of the Slovenian language as preeminent in the Yugoslav state and society.²⁰

The adoption of the SFRY presidency proposal's for amendments to the 1974 constitution by the SFRY Federal Assembly to counter alleged anti-communist and secessionist tendencies on 11 February 1987 (Fink-Hafner & Robbins 1997: 295), the 'trial against the four' in June and July 1988, the violent suppression of Albanian demonstrators in Kosovo in October 1988, and support for Milošević's nationalist policies in Kosovo reflected by demonstrations in Belgrade on 19 November 1988 stimulated Slovenian rejection of the 1989 federal budget in December 1988 and expressive moral support for oppressed Albanians in Kosovo in February 1989. This was deeply condemned by Serbian leadership who announced an economic boycott of Slovenian products on 1 March 1989. Milošević, in the role of the newly elected President of the Socialist Republic of Serbia, went even further by defining the situation as fascist and demanding a shift in the Slovenian position on the Kosovan crisis on 22 May 1989. Following the adoption of the 1989 federal budget despite Slovenian opposition in June 1989 and the Serbian adoption of constitutional amendments to the Constitution of Serbia which abolished the autonomous statuses of the provinces of Vojvodina and Kosovo at the end of March 1989, the escalation between Slovenian 'secessionist' politics and Serb-led 'centralist' politics reached a crucial point with amendments to the constitution of the Socialist Republic of Slovenia on 27 September 1989. The amendments declared the primacy of the republican constitution over the federal constitution, reinforced the right to self-determination and the right of secession of the republics, and paved the way for first free multi-party elections.

demonstrations, kept constant pressure on the Slovenian communist leadership, and organised events on the state of human rights in Yugoslavia and in Slovenia. The Committee dissolved after the introduction of political pluralism and the first free democratic elections (Žerdin 2008).

¹⁹ Civil society in Slovenia began emerging in the 1970s and gained significant influence in the 1980s (see Fink-Hafner 1992). New social movements pushed the communist leadership for the introduction of democratic reforms and the protection of rights for various disadvantaged social groups and minorities, but in the late 1980s the civil society became pervaded with demands for higher levels of Slovenian autonomy. The proponents of the ethno-national and secessionist agenda overshadowed the progressive ideals of the emancipatory social movements, which consequently also resulted in a demise of the politically vibrant civil society after the eventual creation of the nation-state (Kuzmanić 2003).

²⁰ For example, Milan Kučan, the president of the League of communists of Slovenia stated in a public speech in Šentvid pri Stični in 1988 that the Slovenian nation could not accept a state that restricted the right to the use of the Slovenian language for its own state. In his defence, when asked to advocate the position of Slovenian communists on the eventual republican constitutional amendments, Kučan stated that he was primarily Slovene and then communist. Janez Stanovnik, President of the Socialist republic of Slovenia, reaffirmed Kučan's position by stating that 'In Slovenia, the Slovenian language will be spoken, resolutely Slovenian!' (Prunk 1992: 416).

The climax of the first fundamental democratic changes was overwhelmed by the danger of anti-Slovene 'meetings of truth' by Serb stormers that agitated for the dismissal of the separatist Slovene leaders, where participants demanded arms to fight Slovenia (Fink- Hafner & Robbins 1997: 300). Although this meeting was prevented in Slovenia by the Slovenian authorities,²¹ an awareness of danger remained immanent since amendments to give border control to the military were adopted in March 1990 and Yugoslav People's Army started to confiscate the arms held by the Territorial Defence units. Hence, secret discussions of the Presidency of the League of Communists of Yugoslavia on military intervention in Slovenia from March 1988 remained open. In these circumstances of uncertainty new Slovenian parties²² formed to oppose the Slovenian communists, who were already showing their disinclination to the Yugoslav project within the Yugoslav League of Communists by trying to confront both challenges (Yugoslav centralism and communism) on the basis of the national question. Thus, national sovereignty and independence manifested the most important goals of the 'new' parties since the 'old' ones initially looked at confederal solutions to the Yugoslav crisis and had functional comprehension of the Slovenian nation as 'a tool towards integration into European community of free nations and states' (Kučan 1990). The majority of the 'new' parties, along with the Slovene Writers' Association, adopted the 1989 May Declaration, in which they declared their desire to live in a sovereign state of the Slovenian nation. On the wings of semi-cultural bodies like writers' and intellectuals' societies the 'new' parties embraced an ethno-national agenda and formed a group called the Democratic Opposition of Slovenia (DEMOS)²³ before the 1990 national elections. According to Kellas (2002: 74), parties with ethno-national agendas need to be allowed to operate within the political system if they are to promote their nationalist and secessionist claims. This was endorsed with the introduction of political pluralism and the consequent free general elections set for April 1990. Even the reformed communists needed to find ideological foundations for their reaffirmation of the 'national question' in order to compete with the 'nationalist' opposition on equal basis.²⁴ As a result, one of the most contested debates among

²¹ The perception of the importance of the meetings and the dangers they represented is still easily identifiable in Slovenian politics. For example, in 2009 the President of the Republic, Danilo Türk awarded the chief of police force, Tomaž Ertl, with highest state honours for successfully preventing the 'meeting of truth' in Slovenia (Operation North) despite the fearsome opposition of the right-wing parliamentary opposition since Ertl was also in charge of arrests in 'trial against the four'.

²² We adopt the new-old party framework to differentiate between the communist party and its descendants (old parties) and the parties that were newly formed without any previously established infrastructure (Fink-Hafner & Krašovec 2000).

²³ Several key figures of the DEMOS coalition came from the ranks of intellectuals around the *Nova Revija* circle as well as other intellectual dissident milieus that promoted national self-consciousness (e.g. Dimitrij Rupel, Jože Pučnik, and France Bučar).

²⁴ Slovenian communists found their link to the 'national question' in the 'Čebine Manifest', the document of the inaugural congress of Slovene communist party which determined the party as a

political actors did not focus around the civic vs. ethnic divide, but rather to which degree the ethnic model should be applied. The DEMOS coalition parties, infused by the feelings of national spring and anticommunist sentiment, eventually won the inaugural democratic elections and called for, in consonance with reformed communists, a plebiscite on independence. Independence became an obligation of the legislator due to the plebiscite's result and was carried out in collaboration between the new (DEMOS) and the old (reformed communists) political elites. This was essential for generating high levels of national cohesion during the state-building process and was reinforced by the co-habitation of a 'left-wing' president and the 'right-wing' government. Accordingly, several ethnic standpoints of the 'right-wing' government remained unrealised.

The adoption of a 'milder' ethnic model aimed at preventing the discontent of non-ethnic Slovene citizens and residents of other republics with Yugoslav citizenship. Nevertheless, the devotion to democratic standards and introduction of certain civic principles was principally directed towards international audiences in order to prepare grounds for international recognition (Krivic 2003; Zorn 2009).²⁵ Slovenia accordingly chose a moderate and very inclusive path to sovereignty and independence by the Declaration of Good Intentions adopted by the Assembly on the eve of the plebiscite, in which it promised to confer its citizenship to permanent residents having citizenship of other republics. Vibrant diplomacy as well as a seemingly reconcilable stance towards the residents of non-Slovene ethnic descent and a devotion to democratic standards and aspirations for European integrations proved to be instrumental in ending the 'Ten Day War'²⁶ and gaining international recognition of independence.²⁷ According to Brubaker (1996: 432), incorporation of civic principles in this manner makes them external to the political system since the main reasons for their introduction into constitutional texts and public declarations lies in their international legitimacy. Therefore, we can hardly argue in favour of the

national party 'prepared to devote all its capacities to the interests of Slovenian nation' (Kučan 1990: 144).

²⁵ A lack of international support for national independence at the beginning of the 1990s presented a serious obstacle since the international community watched the national revival in the Balkans cautiously. Several historians (Vodopivec 2005; Pesek 2007; Prunk 1992; Pirjevec 1995) reported intense diplomatic activity by the state leadership. DEMOS leaders focused on gaining the support of their party families in Germany and Austria (Prunk 1992), while the reformed parties demonstrated a devotion to European integration. A clear indication of this devotion was the 'Europe now!' slogan of the former League of Communists, which was prepared for the inaugural democratic elections of 1990 (Fink-Hafner & Lajh 2008: 16).

²⁶ The 'Ten Day War', or the Slovenian Independence War, was a brief military conflict between the Slovenian Territorial Defence forces and the Yugoslav People's Army in 1991 which followed Slovenia's declaration of independence. The representatives of the European Communities (Jacques Poos, Hans van den Broek, and Gianni de Michelis) vitally contributed to ceasefire and drawing up of the Brioni Declaration, which ended hostilities and settled terms for conflict resolution.

²⁷ Borak et al. (2005) report of a race against time in order to catch the international community 'sleeping' before it reached a consensus. An unfavourable stance towards independence was expected due to the international community's negative perception of state secessions in the communist world.

relevance of the civic model when an ethno-cultural conception of nation pervades the fundamental state documents (e.g. Preamble to the Constitution of the Republic of Slovenia, the Citizenship Act) and is undisputedly linked with the state-building process.

In terms of Brubaker's (1996) framework of the nationalising state we can discern several characteristics that define that state model. First, we may see the conception of the 'core nation' defined in ethno-cultural terms, which is clearly distinguished from the permanent resident population and in normative terms also to the citizenry. Second, there is a perception that the nation that legitimately owns the polity since the latter has been established for the core nation. Both points are easily demonstrated by references to the relationships between nation, state, and citizenship in the constitution and legislation. Overall, the promotion of the idea by the political elite that the whole nation is not flourishing despite its rightful ownership of the previously socialist republican state is also straightforward when looking at the genealogy of state-building and will be further explored for the post-independence period in remaining part of the paper. Hence, the elaboration of the genealogy of Slovenian citizenship provides additional weight to the argument. However, this needs to be linked to the context prior to and at the outset of the initial determination of the Slovenian citizenry.

1.2 Construction of the Slovenian citizenship regime

Although residents of territories composing the present-day Republic of Slovenia have witnessed numerous citizenship arrangements in the past two centuries, there is no distinctly Slovene historical legacy other than republican socialist citizenship from the SFRY citizenship framework. Because of the absence of a prior sovereign and independent statehood, the conception of membership has had to relate in some respects to the citizenship of the federation. Despite having in force a single citizenship in the SFRY, a simultaneity of republican and federal citizenship was in effect, although the rights of citizens of one republic in the territory of another did not substantially change.²⁸ The federal citizenship was considered to be primary in international public and private law (Kos 1996), while the republican citizenship had an exclusively internal orientation.²⁹ Although the issue of primary and secondary status of federal and republican citizenship was unresolved, it should be stressed that registers of citizenship existed only on the republican level (Štiks 2006: 485), which was vital from the administrative point of view. The acquisition of a republican citizenship for citizens of other republics was lax and increasingly instrumental since the initial three and one year condition of residency was dropped in early 1960s and ended in granting a republican citizenship upon application for

²⁸ For more on SFRY citizenship and its relation to republican citizenships of various socialist republics see Štiks (2006; 2009), Džankić (2010), Spaskovska (2010), Krasniqi (2010), and Sarajlić (2010).

²⁹ See more on the debate regarding primary and secondary status of both citizenships and additional references in Štiks (2006).

permanent residents with the republican citizenship law from 1976. Although some perceived it as symbolic and fictional, republican citizenship proved to be of vital importance since it provided the foundations for the continuity in the new Slovenian citizenship legislation of 1991.³⁰ Nevertheless, Mesojedec Pervinšek (1997: 21) asserts that the principle of the legal certainty of Slovenian citizenship is fulfilled by art. 39 of the citizenship legislation which establishes legal continuity with previous citizenship arrangements (three socialist republican laws from 1950, 1965, and 1976 and three federal citizenship laws 1945, 1965, and 1976).

The citizenship law of the independent and sovereign Republic of Slovenia was part of four constitutive acts adopted with the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia in June 1991. This preceded the adoption of the state's constitution. The basic principle of the incipient Slovenian citizenship legislation was the principle of continuity (Mesojedec Pervinšek 1997). Accordingly, all individuals with the citizenship of the Socialist Republic of Slovenia automatically acquired Slovenian citizenship.³¹ The author claims (*ibid.*) that the *ex lege* approach should have prevented the conditions for the creation of statelessness since every citizen of the SFRY was entitled to republican citizenship via the principles of *ius sanguinis* or *ius soli*. However, the precondition of the equal enforcement of the principle of continuity was not implemented due to hostilities in the territory of the former SFRY.³²

Slovenia complemented its approach to the designation of the body of the citizenry with some limited additional options, thus fulfilling the obligation derived from the Declaration of Good Intentions of December 1990, since citizens of former republics could apply for Slovenian citizenship under two conditions that demonstrated their genuine links with the state. They had to show permanent residence on the day of the plebiscite on independence (23 December 1990) and actual residence within the territory. These provisions (art. 40 of the Citizenship Act) never created major discrimination in the absence of the incorrect interpretation of the provision of public peace and order (Constitutional Court Decision U-I-89/99 – Case Šulc), but they did indirectly create grounds for the consequent erasure of citizens of other former republics that decided against acquiring Slovenian citizenship or failed to acquire it from the register of permanent residents without notification.³³ The legislator decided to avoid resolving the issue in the Citizenship

³⁰ The importance of Slovenian socialist republican citizenship could be anticipated by Slovenian amendments to the republican constitution on 27 September 1989, which established the primacy of republican constitution over the federal one.

³¹ The acquisition was automatic regardless of whether a citizen was actually listed in the official register of citizens. If not, a procedure of ascertainment was carried out (Mesojedec Pervinšek 1997).

³² This argument was persistently put forward by Slovenian authorities when explaining the reasons for the break in continuity of citizenship legislation and consequent creation of statelessness.

³³ The problem of the erased along with its numerous judicial acts and accompanying legislation that accumulated on the basis of it will be analysed in-depth in the section on minorities since it is strictly speaking the problem of the execution of the aliens act.

Act as well as in the aliens act in order to regulate it within succession agreements (e.g. Zorn 2005; 2008; 2009; Mesojedec Pervinšek 1997; Medved 2007). The rationale damaged Slovenia's reputation in academic circles and among human rights activists since hostilities in the territory of the former SFRY delayed succession negotiations. This was perfectly clear to the Slovenian leadership at the time. However, the lack of resolution apparently did not significantly harm the state's reputation in the international community nor did it prevent it from entering the European Union.

The principle of the continuity of Slovenian citizenship was combined with the principle of voluntary acquisition and loss of citizenship. Therefore, apart from some exceptions, Slovenian citizenship legislation prevents the loss or acquisition of citizenship against the will of individual. This principle, in combination with continuity of the *ius sanguinis* principle, was also one of the reasons against granting citizenship to all residents. Although debated at the time (Zorn 2008), the political leadership feared that it would create numerous involuntary acquisitions of citizenship and the problem of dual citizenship due to the political situation and hostilities.³⁴ The 'classical option' combined with the application of the domicile principle, an alternative known from the peace treaties of Trianon and Saint Germain, was therefore discarded (Mesojedec Pervinšek 1997). Nevertheless, the imperative of preventing dual citizenship eventually proved to have a diametrically opposite rationale. Because of concerns about contested loyalty, dual citizens faced vigorous the political disapproval of the nationalist parties in the first half of the 1990s.

Slovenian citizenship legislation has changed several times since its initial determination. The first amendment of the Citizenship of the Republic of Slovenia Act (CRSA) took place six months after its inception in December 1991 and was aimed at members of the Yugoslav National Army that had clashed with the Slovenian territorial defence forces in the 'Ten Day War' for Slovenian independence (Constitutional Court Decision U-I-89/99; Mesojedec Pervinšek 1997: 27). In accordance with the principle of proportionality (*ibid.*), a new provision introduced possibility of rejection of applications for citizenship on the basis of art. 40 due to a threat to public order, security, and defence of the state.³⁵ The second revision (CRSA-B) was adopted in July 1992 and facilitated naturalisation for descendants of Slovenian nationals who lost or for historical reasons did not acquire Slovenian citizenship. This was annulled in December 1992.³⁶ The 1994 revision (CRSA-C)

³⁴ Evidence of application of art. 40 indicates the possibility that obstacles to the release from citizenship in cases of automatic acquisition are due to lack of information and the political situation in the territory of the former SFRY.

³⁵ A somewhat similar provision was present in the former Yugoslav citizenship legislation after the Second World War for collaborators with the occupation regime and the opponents of the communists.

³⁶ The provisions were annulled due to a breach of the principle of the equality of the applicants who applied on the basis of arts. 13a and 41 (Constitutional Court Decision U-I-69/92-30 – Cases Urbanc and Novak). In addition, in December 1992 Constitutional Court decided (U-I-98/91) to annul art. 28 of the CRSA thus terminating the ability of administrative organs to make discretionary decisions regarding

attempted to resolve issues deriving from deficient republican registers and reinforced certain provisions regarding the naturalisation process, most notably language proficiency provisions. CRSA-C marks the beginning of a series of citizenship legislation revisions that introduced language proficiency provisions (see Medved, 2007). The promotion of the Slovenian language by the right-wing political parties was principally aimed at citizens and residents from the former Yugoslav republics since there was a common perception that they lacked language skills. The perverse logic of populists goes further by putting forward lack of loyalty, 'laziness' and 'disrespect' as the main reasons for the 'Southerners'' deficient language proficiency in Slovenian.

In October 2002 a substantial revision of the citizenship legislation was carried out (CRSA-Č) addressing among other things individuals who had failed to resolve their situation due to the 'erased' problem. According to Zorn (2008: 67), provisions on the 'erased' were adopted due to their collective effort and the urge to harmonise Slovenian legal order with the European Convention on Nationality.³⁷ CRSA-Č additionally regulated language provisions and conditions to fulfil language proficiency requirements. The last revision of the citizenship legislation took place in 2006. It clarified the procedure for the acquisition of Slovenian citizenship by registration, administrative verification of conditions for acquisition of citizenship, refinement of the status of foreigners, and language provisions. Some provisions also related to autochthonous Slovenian minorities and others facilitated naturalisation for Slovenian emigrants and their descendants.

The main debates concerning citizenship initially related to the question of the nation since opposing views between the left-wing reformed block and right-wing parties of the 'Slovenian Spring' also meant two different conceptions of citizenship – civic and more liberal vs. ethnic and more communitarian.³⁸ One of the most contested debates also ignited around the question of dual citizenship since a large number of individuals became dual citizens on the basis of art. 40 (citizens of other former Yugoslav republics). Arbitrary bureaucratic practices, revanchism, and ethno-cultural demands pervaded citizenship politics in the post-independence era. Mistrust of residents (and eventual citizens) from the former republics, ignited by populist politicians, elevated in the 1990s due to economic crisis, rise of unemployment, and war. However, a Slovenian public opinion survey from 1991³⁹

citizenship without stating the reasons for this decision (art. 28). Hence, the administrative organ was obliged to act in accordance with the common administrative procedure.

³⁷ Provisions for the 'erased' provided grounds for 2,959 applications for the acquisition of citizenship out of which 1,729 were successful (Pistonik 2008: 233).

³⁸ The debate sparred around different issues but the following were the most pervasive: deliberation on the use of domicile or *ius sanguinis* as the main principle, language proficiency requirements, the resolution of the 'erased' problem and related alien legislation, clashes regarding conceptions of citizenship as an instrument of equality, and source of rights vs. a status of pride and honour.

³⁹ The Slovenian Public Opinion Survey is a survey conducted by the Public Opinion and Mass Communication Research Centre of the Faculty of Social Sciences, University of Ljubljana. The survey has been conducted regularly since 1968 and remains the most comprehensive source of social science

showed that hostility was initially orientated primarily towards Serbs and Montenegrins and less towards other ethnicities (Klinar 1992: 20). According to this survey, those were the only categories of residents that did not perceive the Serbian regime to be responsible for the conflicts in the territory of the former SFRY, so their loyalty to Slovenia was seen as questionable. In line with these results, Ule (1994: 51) identified a negative perception of these two groups of residents among the general population as an inevitable trigger of socio-political regressive-aggressive potential, which manifested in a series of violent acts aimed at ethnic non-Slovenes.

Overall, we are able to distinguish two separate trajectories in the citizenship legislation since its inception. The first encompasses attempts to resolve deficiencies in the newly conceived legislation by eliminating anachronisms which originated from the previous socialist regime or from impulsively drafted independence legislation (e.g. authoritarian administrative procedures, undemocratic practices, discriminatory provisions). The second covers instances of the affirmation of ethno-cultural criteria, most notably language proficiency provisions and favouritism towards members of Slovenian ethnic community abroad (see Medved 2007; Zorn 2008; Mesojedec Pervinšek 1997; Blitz 2006).⁴⁰ The Slovenian language was main tool for nationalist actors throughout the era of independence since there was a common perception that paying 'insufficient' attention to the language presents a threat to Slovenian culture and statehood. The rise of Slovenia's reputation as a modern liberal democracy created fertile conditions for increased ethno-national self-confidence. A more reserved stance towards the introduction of ethnic elements to the political system from the era of independence could be discarded since the international community was no longer distrustful (Krivic in Zorn 2008; Prunk 1992; Borak et al. 2005).

We may discern a number of important points for our research framework from the genealogy of the Slovenian citizenship regime. First, the ethno-cultural conception of nation clearly played an important part in shaping certain citizenship provisions. Favouritism of ethnic Slovenes in the process of acquisition of citizenship and frequent references to the Slovenian nation as distinct from Slovenian citizens in the legal documents present just some examples. The problems of ethnic others and language requirements aimed at them probably present even better examples of the link between ethnic conceptions of nation and citizenship. In addition, we may identify several hallmarks of the 'nationalising state' framework (Brubaker 1996)

empirical data in Slovenia. On the basis of public opinion research, Klinar (1992) puts forward an interesting observation of the attitudes towards fellow-residents of different descent. The most unwanted were Serbs and Montenegrins due to the role of their states of origin in the war in Croatia and conflicts all over the territory of the former SFRY. Klinar also identifies the rejection of the negative role of those former republics in the Yugoslav conflicts by the residents of Serb and Montenegrin origin.

⁴⁰ Indicatively, Mesojedec Pervinšek (1997: 14-15), a senior state official dealing with issues concerning citizenship, stresses the return of Slovene ethnic expatriates as part of Slovenian national interest, which supposedly does not create unequal treatment for other categories of non-citizens.

after an examination of the citizenship legislation trajectory. First, the existence of a core nation that does not overlap with territorial borders becomes evident in the case of provisions for ethnic Slovenes without citizenship. Second, the idea of specific actions needed to promote language, culture, and demographic shifts is continuously present, most notably in the 'care' for language when imposing it on non-ethnic Slovenes and attempts of reunification of ethnic Slovenes within Slovenian state. Third, justification of these measures is frequently defended by the assumption of the subordination of the Slovenian nation in previous regimes, where the nation's welfare and culture was compromised. Fourth, mobilisation on the basis of these ideas is permanently on the repertoire of election campaigns and is present in the national legislature, whose debates mobilise xenophobic reactions of a major part of civil society organisations and the public. As a result, the discriminatory practices of public institutions acting on the basis of these ideas remain a constant feature of political system (e.g. initial abuse of discretionary powers by public organs when deciding on issues regarding citizenship, discriminatory provisions aimed against non-ethnic Slovenes, attempts to revise acquired rights and statuses.).

On the other hand, a desire to retain a good impression in the international community played an important part in introducing 'civic' provisions and abolishing undemocratic practices. Certain revisions of the citizenship legislation in 2002 as well as the implementation of various Constitutional Court decisions may be linked to the pressures of international institutions and civil society organisations. Nevertheless, state institutions and officials disregarded these pressures on several occasions when provided with 'objective' reasons. Such cases are presented in the following section.

2 Failing to be 'true Slovenes': (mis)treatment of dual citizens, refugees, and the 'erased'

The politics of citizenship importantly determined the perception of Slovenia in the international community. The incongruous 'national' agendas of the two political elites (centre-left reformed communists and centre-right anti-communist forces⁴¹) created perennial political clashes regarding issues related to citizenship. With the left-wing agenda being more liberal and focused on rights and the right-wing more communitarian, several fiercely contested issues emerged in the field (e.g. transitional provisions of the citizenship and alien acts, regulation of dual citizenship, solution to the refugee crisis). Though some clearly reflected the left-right logic, others failed to generate such clear-cut divides and demonstrated the differences in intensiveness of the ethnic model.

⁴¹ The initial anti-communist opposition was personified by the DEMOS coalition, which formed the first democratically elected government, but was not entirely composed of centre-right parties. In addition to them (Slovenian Democratic Union, Social Democrat Alliance of Slovenia, Slovene Christian Democrats, and Farmers' Alliance) it also included one progressive centre-left party, the Greens of Slovenia.

2.1 'Erasure' of residents from former Yugoslav republics

The case of the 'erased' originates in the Aliens Act, which entered into force on 25 June 1991. One of the reasons lies in art. 81 of the Act, which provided for the citizens of the former SFRY who failed to acquire Slovenian citizenship within a period of six months to become subjects of the Aliens Act after the expiration of additional two-month period. Hence, these individuals became subjects of the Aliens Act on 26 February 1992 and had to acquire residence permits in accordance with the act, despite having had the status of Yugoslav citizens with a permanent residence permit in Slovenia prior to independence. They were also automatically erased from the register of the permanent population and were subjected to a systematic destruction of their identification papers (perforation of documents) by the state (Dedić et al. 2003; Zorn 2007). The problem of the 'erased' is therefore twofold since it encompasses the failure to regulate residents from former republics in the Aliens Act specifically ⁴² as well as causing the mistreatment of these individuals by the administrative authorities.

On 28 October 1999, the Act Regulating the Legal Status of Citizens of the Former SFRY Living in the Republic of Slovenia (ARLSC) entered into force. The act regulated the conditions for acquisition of permanent residence permits for citizens of the SFRY successor states and provided for the issuance of permanent residence permits.⁴³ The act provided a three-month timeframe for applications and determined that the permanent residence permit acquired on the basis of this act only had future effect, equally as in the case of acquisition of the permit on the basis of the Aliens Act. In its decision U-I-295/99-13 the Constitutional Court annulled three paragraphs of the ARLSC in 2000 due to limitations regarding the acquisition of permanent residence permits (Pistotnik 2007: 231). The legislator amended the ARLSC with ARLSC-A in 2001, but the Constitutional Court found the act incongruent with the constitution on 3 April 2003 (U-I-246/02-28) and demanded from the Ministry of the Interior to issue supplementary decisions to the permanent residence permits having retroactive effect. The Court also annulled the three-month time limit for applications due to its short duration and it consequently reopened the application period. The decision also included persons who had been forced to leave the state and set conditions for the provision of actual residence.

After seven years of political abuse of the issue the government finally managed to propose a revised version of the act – ARLSC-B, which was adopted in

⁴² The Aliens Act did not regulate the position of this group of individuals specifically despite their position, which led to a Constitutional Court decision in 1999 (U-I-284/94). This decision determined the Aliens Act incongruent with the constitution and demanded revision of specific provisions within six months.

⁴³ A permanent residence permit was issued to every citizen of another state of the former SFRY (foreigner) with permanent residence registered in Slovenia on 23 December 1990, who had been living in Slovenia ever since, or to a foreigner residing in the Republic of Slovenia on 25 June 1991, who had been continuously living in the territory.

March 2010 and entered into force in June of the same year despite desperate attempts of the right-wing opposition to impeach the competent minister and call for a referendum that was denied by the Constitutional Court decision U-II-1/10-19. With ARLSC-B the government as the submitter of the act implemented Constitutional Court decision U-I-246/02-28 and attempted to cope with certain deficiencies identified in practice (issuance of supplementary decisions, the problem of children born to the 'erased' after 25 June 1991, and dealing with persons who had already acquired Slovenian citizenship in the meantime). Adoption of ARLSC-B denoted the conclusion of the two-step process towards the legal reconciliation of the status of the 'erased'. The first encompassed the issuance of supplementary decisions of the Ministry of the Interior in accordance with Constitutional Court decision U-I-246/02-28. The process that actually started with the Minister of the Interior Rado Bohinc in 2003, but was not carried through and was suspended under the centre-right government (2004-2008). The second stage covered the adoption of the ARLSC-B accompanied by an official apology of the President of the National Assembly of the Republic of Slovenia.⁴⁴

In the meantime, the decision of the European Court of Human Rights (ECHR) in favour of the plaintiffs (*Kurić and others vs. Slovenia* 26828/06) put forward the breach of arts. 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless, the question of reimbursement for the damage done remains an open issue, as is indicated by the decision of the ECHR that it was 'not ready' to decide at the time as well as by Constitutional Court decision U-II-1/10-19, which in its para. 43 provides an option to limit financial reimbursements according to a strict test of proportionality. The remaining open question is therefore principally a political question since the current opposition vigorously contests the adoption of ARLSC-B on the basis of the financial consequences for the state. Hence, the issue of financial consequences of the 'erased' is set to occupy the political agenda for years to come.

The acute problem of de facto statelessness experienced by the individuals erased from the register of permanent population⁴⁵ and the consequent deprivation

⁴⁴ Večer (2010), 'Prva opravičila izbrisanim za dolgoletno kršitev človekovih pravic'. <http://www.vecer.com/clanek2010061505550281>, 15 October 2010.

⁴⁵ According to the Ministry of the Interior the latest official number of the 'erased' is 25,671. Delo (2009), 'Parlamentarna preiskava o številu izbrisanih'. <http://www.delo.si/clanek/80860>, 15 November 2010.). The number rose from a figure of 18,305 individuals, which was initially presented by the same ministry in 2003 (ibid.). According to Katarina Kresal, the current Minister of the Interior, the gap is a consequence of a thorough examination of the databases and the change of database caretakers. Dnevnik (2009), 'DZ je ustanovil preiskovalno komisijo o izbrisanih'. http://www.dnevnik.si/novice/aktualne_zgodbe/1042266911, 17 December 2010. Due to the increase in the official number of the 'erased', the right-wing opposition forced the creation of an ad hoc parliamentary commission to determine the political responsibility of persons responsible for the preparation and implementation of the counting of the 'erased'. Right-wing opposition parties linked the issue with financial consequences since the higher number potentially means more reimbursements. An important member of the main opposition part, Branko Grims (Slovenian

of core civil, political, and social rights reflects the fundamental divisions within the Slovenian political elite that ignite the electorate. There is no single guilty actor responsible for the problem. Apart from the activism of a part of civil society, we can hardly discern an actor with a positive impact on the resolution of the problem since even the European Commission and the Constitutional Court of the Republic of Slovenia did not press continually and with same intensity for its resolution. The trajectory of activities in the National Assembly and the manoeuvres of political actors reveals more on the issue and can be divided into three periods: a) the actual erasure and events surrounding it, b) the initial period of resolving the issue leading to Constitutional Court decision U-I-246/02-28 in 2003, and c) the implementation of the Court's decision.

The period of the actual erasure must be put within the context of the breakup of Yugoslavia and the emergence of hostilities. The grounds for the act were provided by the Assembly's rejection of the amendment to art. 81 of the Aliens Act which was proposed by the centre-left opposition. The rejection of the amendment seemed unconventional since the DEMOS government agreed with the amendment. Despite its rejection no one anticipated the 'erasure' since even the submitters proposed the amendment in order to prevent the difficulties applicants would come across when assembling documentation for their applications for citizenship or residence permits (Mencin in Mekina 2002). Rejection was also a surprise due to the relatively strong centre-left opposition, whose cooperation was instrumental for the government in important projects.⁴⁶ The rejection of the proposed amendment, which would prevent the possibility of 'erasure', was substituted by an alternative to resolve the issue via reciprocal agreements between the successor states. According to the government (Zorn 2008), the rationale was to provide stronger arguments in negotiations with other successor states to protect Slovenian citizens in the former Yugoslav territories. Although such arguments initially had some political weight, it was increasingly obvious that succession agreements would be severely delayed due to ongoing conflicts.⁴⁷

The actual erasure of individuals from the register of the permanent population was supported in principle by the government since it was informed about the problem by a memorandum by the Minister of the Interior called *Open Question on the Execution of the Aliens Act* in June 1992 (Zorn 2008: 65). Together with

Democratic Party), even linked the higher number to a remark of the Serbian minister for the diaspora who perceived the original number as too low (ibid.). Grims attempted to portray the current government as acting on the dictate of the Serbian government as well as trying to relate the problem of the 'erased' to Serbia.

⁴⁶ A clear example of such cooperation is art. 40 of the Citizenship Act, which is a consequence of pragmatic bargaining between the centre-left opposition and the centre-right coalition. Although it was in favour of a more exclusive formulation (in line with the ethnic agenda and based on language proficiency provisions), the coalition gave way to the more liberal option supported by the opposition in order to get support for other state-building projects.

⁴⁷ The agreement on the Succession of the Former SFRY was signed in Vienna on 29 June 2001 and came into force on 2 June 2004, upon ratification by all successor countries (UN 2010).

the rejection of the amendment to art. 81 of the Aliens Act, the issue has been frequently interpreted as one of the last attempts to consolidate the DEMOS governmental coalition.⁴⁸ The main rationale of the erasure seems to have been in retaliation against members of the Yugoslav People's Army for their participation in the 'Ten Day War' for Slovenian independence since the erasure affected individuals failing to or deciding not to acquire citizenship on the basis of art. 40 of the Citizenship Act. This is in line with the revision of the same act in December 1991, which introduced provisions about activities against the state. Nevertheless, Todorović (2006) stresses that only around a 2.5 per cent share of the 'erased' were former army personnel.

Two periods after the actual erasure reveal the character of the Slovenian political and administrative elite as well as the judiciary. Several attempts to resolve the problem by distinguished professionals and activists were ignored by the political and bureaucratic elites. In addition, the Constitutional Court took five years to reach its first decision on the issue. The rationale behind the lack of interest for the issue by the centre-left government⁴⁹ in the 1990s was to avoid risking the break-up of fragile coalitions. The process of accession to the EU provided a window of opportunity for the centre-left political elite since both blocks supported the integration processes and international organisations repeatedly put the issue of the 'erased' on the agenda. Furthermore, the issue did not penetrate the public agenda until 2002,⁵⁰ thus giving an opportunity to resolve the problem without major popular discontent. Instead, the proximity of Constitutional Court decision U-I-246/02-28 (2003) to the national elections prevented its implementation and spurred numerous calls for a referendum, impeachment procedures, the veto of the National Council, and the drafting of three varieties of acts on the 'erased' that entered legislative procedure at the same time. As it happened, the populism of the centre-right parties regarding the 'erased' ignited the electorate and it helped them to come to power. A new impetus to resolve the problem came only with a shift in power in 2008.

The case of the 'erased' clearly portrays the general attitude towards the population of non-Slovenian descent originating from the territory of the former SFRY. In a climax of increasing distrust towards individuals of Serbian and

⁴⁸The DEMOS coalition was composed of dissimilar parties with one major goal: the formation of the independent and sovereign democratic state of the Slovenian nation (Pesek 2007). After the realisation of this overarching goal, centrifugal forces began to outweigh DEMOS's centripetal potential.

⁴⁹ The centre-left government took up its post in 1993 after a successful vote of constructive no-confidence in centre-right government. All subsequent governmental coalitions of the 1990s, including the one formed in 1993, reflected narrow majorities and a lack of programmatic proximity, despite being led by the same centre-left party (Liberal Democracy of Slovenia). The only period with sufficient political capital to resolve the issue without the cooperation of the centre-right parties was during 2000-2004, but was instead decided to play it safe despite having the support of an electorate supportive of immigrants (e.g. Klinar 1992).

⁵⁰ Despite having been familiar to certain groups of activists, victims and professionals, the issue only gained national recognition with an article in national daily newspaper *Večer* by Igor Mekina in 2002.

Montenegrin descent, the executive backlash against these residents in the early 1990s seemed morally less disputable due to their supposed loyalty to the 'wrong' homeland. After the actual act of erasure the issue became irresolvable to political actors either due to their unwillingness to take any risks (the centre-left parties) or due its usefulness for mobilising electoral support (the centre-right parties). The issue of the 'erased' is indicative of Brubaker's 'nationalising state' concept (1996) in terms of the practices of state officials and bureaucracy which were legitimated by ignited xenophobic sentiments among the dominant population. Populist discourse generated by parties and politicians in government and legitimated in public opinion (Klinar 1992) clearly resonated in administration's activities. Low levels of autonomy and initial insufficient professionalisation (Haček 2006) should certainly be one of the main reasons for the penetration of ethno-nationalism in the Slovenian administration's structures.

2.2 (In)tolerance of dual citizenship and the (non-)existence of refugees

Slovenia does not forbid dual citizenship since it has not imposed an automatic (*ex lege*) loss of citizenship in cases of acquisition of citizenship of another state. Tolerance of dual citizenship⁵¹ is complemented by the application of the principle of effectiveness of Slovenian citizenship in the territory of the Republic of Slovenia. When looking at dual citizenship provisions, it is clear that Slovenian descendants and EU citizens from member states with reciprocal agreements are in favourable positions compared to other applicants. The government's rationale behind this favourable position towards Slovenian descendants abroad is the economic migration due to poor economic conditions before the Second World War and 'forced' political emigration that followed the end of the Second World War, when the communists came to power. The Slovenia's official position favours their return which is supposed to be in the national interest (Mesojedec Pervinšek 1997: 14). Grounds for such provisions are set in art. 5 of the Constitution, which denotes a

⁵¹ Situations in which Slovenia allows dual citizenship are: a) naturalisation, b) naturalisation of underage children, c) facilitated naturalisation, d) extraordinary naturalisation, e) acquisition of Slovenian citizenship via *ius sanguinis* (children of mixed marriages), and f) acquisition of another citizenship by Slovenian citizen. In cases of naturalisation, facilitated naturalisation, and extraordinary naturalisation an applicant for Slovenian citizenship does not have to submit a proof of release from his or her former citizenship if he or she: a) is a citizen of an EU Member State with established reciprocity with Slovenia, b) is stateless, c) proves automatic loss with naturalisation, d) proves inability of the former state to decide within a reasonable time, e) proves an absence of the institute of release of the former country or if the latter perceives the acquisition of another citizenship as an act of disloyalty, f) is a juvenile, g) is a Slovenian emigrant or a descendant of Slovenian emigrants up to fourth degree in a straight line, f) has lost Slovenian citizenship on the basis of release or waiver, g) was born in the territory and had actually lived there from birth, h) has refugee status in accordance with the Asylum Act, i) is stateless, j) is married to a Slovenian citizen and Slovenian government agrees with it (specific conditions), or k) is subject to extraordinary naturalisation. Children of Slovene parents in mixed marriages are also allowed dual citizenship as are Slovenian citizens whose original citizenship is Slovene, if the country of secondary citizenship allows it (Ministry of the Interior 2010).

special concern for Slovenian autochthonous minorities, expatriates, and migrant workers abroad. The realisation of these provisions is put in the hands of the Government's Office for Slovenians Abroad (GOSA). The framework is designed to give Slovenian descendants certain benefits, promote repatriation, and provide assistance to Slovenes without citizenship in need (GOSA 2010).

On the other hand, the core political debates regarding dual and multiple citizenship focused on regulating the status of former citizens of the SFRY without Slovenian citizenship. This category of citizens was the main reason for the debate on dual citizenship. The problem lies in the formulation of art. 40 of the Citizenship Act and the absence of a condition for the applicants (former SFRY citizens without Slovenian citizenship who resided in Slovenia) to provide proof of release from their former citizenship. The centre-left opposition negotiated this formulation due to fears that the applicants might face difficulties in their attempts to provide such proof. The provision prevented the creation of statelessness, but also provided grounds for a large number of dual citizens: this caused intense political conflict (Mesojedec Pervinšek 1997: 14). Centre-right parties accused the thus created dual citizens of being disloyal and just waiting to opt-out when conditions changed, and continuously pressed for a revision of the original provisions. Parliamentary discussions in the early 1990s were substantiated by the initiatives of different ministries that identified dual citizenship as a problem and pressed for its 'resolution'. It all led to various attempts⁵² to review cases of citizenship status acquisition based on art. 40 of the Citizenship Act (Zorn 2008: 66) despite the different agendas of the proponents. The government thereby pursued a logic of a 'prevention of dual citizenship' (Mesojedec Pervinšek 1997), while the nationalist political parties meanwhile demanded a more transparent 'ethnically-pure' agenda. Slovenia demonstrates a divide between internal (immigrant) and external (emigrant) dual citizenship since the former allegedly creates problems for the state while the latter is even advocated by it. This unambiguous favouring of the dominant nation, which is reinforced with electoral rights of dual citizens permanently residing abroad on all levels,⁵³ clearly shows the 'nationalising' character of the Slovenian state.

The Slovenian regulation of the refugee problem points to a similar pattern. Slovenia recognises two groups of refugees with substantial differences from each other. The first group was constituted on the basis of Temporary Asylum Act and regulated 'temporary' refugees from the territory of the former SFRY, while the

⁵² These included a legislative proposal for revoking Slovenian citizenship acquired on the basis of art. 40, calls for a referendum on reviewing and revoking thus acquired citizenship, and various other actions performed by the nationalist parties. The demands ended with Constitutional Court decision U-I-266/95-9 ruling such attempts unconstitutional.

⁵³ Votes from abroad habitually favoured right-wing parties, which are the key proponents of the ethno-national agenda oriented towards inclusion of ethnic Slovenes living abroad and exclusion of non-ethnic Slovene citizens living in Slovenia.

second falls under the Asylum Act.⁵⁴ The main difference between the two is in the collective conferment of the status for the first, which was relevant for large waves of refugees that came into the state after the break-up of Yugoslavia. The reaction to this large inflow of refugees was the introduction of a *de facto* regime of temporary asylum under the auspices of the Civil Protection Service, the Red Cross of Slovenia, the Governmental Office for Immigration and Refugees, and the UNHCR (Dobovičnik 2010). Without having a single official number, the influx of refugees from the former SFRY demanded a prompt response from competent bodies, which were reluctant to accept more than 10,000 persons due to an alleged lack of capacity (Doupona Horvat et al. 2001). However, Slovenia conferred a status of temporary asylum to approximately 45,000 to 70,000 (Janko Spreizer et al. 2004). Slovenia never conferred full asylum status on these individuals since it, according to Janko Spreizer et al. (*ibid.*), treated them as internally displaced persons on the basis of 1986 Report of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees (A/41/324). Hence, Slovenian authorities applied art. 42 of the Aliens Act which provided the possibility for temporarily accommodating foreigners who could not be removed from the state immediately. The temporary status of asylum enabled the rights to accommodation, meals, basic health insurance and possibility of primary education, but not the right to work.⁵⁵

Slovenia was officially prepared to accept only one fifth of the actual number of officially 'internally displaced persons' (refugees) that *de facto* took shelter in the country due to 'objective' reasons (Janko Spreizer et al. 2004). It additionally victimised the refugees by portraying them as a threat to society, law and order, and later the nation-state. Initial fears were substantiated by the public dissemination of inflated numbers of actual refugees being accommodated at the time (Dobovičnik 2010), which spurred discriminatory patterns oriented against refugees that had often been legitimised on the basis of ideology (Pajnik 2007). Doupona Horvat et al. (2001) also identified a patronising attitude of the state and society towards refugees, by putting forward the gap between the two standards: the perception of democratic

⁵⁴ Slovenian asylum policy evolved in the mid-1990s in parallel to the 'Yugoslav refugee crisis' (temporary asylum). The Asylum Act was passed in 1999 and has been amended four times in order to comply with international standards since this area was one of the conditions for EU accessions (Dobovičnik 2010).

⁵⁵ Slovenian authorities massively conferred the status of temporary asylum until August 1992 when the competent bodies established that objective capacity to provide shelter for refugees had been reached (Doupona Horvat et al. 2001). The status of temporary asylum was legally established in 1997 when the Temporary Asylum Act was adopted, which primarily introduced the right to work for up to 60 days a year. According to Dobovičnik (2010) 21,500 persons with temporary asylum had been living in Slovenia in 1995 and only 5,000 attained the status according Temporary Asylum Act in 1997 since majority returned or attained a different status. In 2002 the Act Amending the Temporary Asylum Act was adopted which enabled acquisition of permanent residence permit to remaining 1,946 individuals (*ibid.*), full-time employment, and entry to the social and health security system. The status of temporary asylum for refugees from the territory of former SFRY expired on 1 August 2003, nevertheless 204 former temporary asylum status holders still needed assistance in 2004 (*ibid.*).

values and human rights we are entitled to and the values of Slovenian policies we legitimise. According to the authors, justification for these recognised anomalies – hierarchy of values, different moral standards – lies in the conception of refugees as a problem since they (i.e. as members of groups in conflict) supposedly created their problem themselves.

3 Hierarchy of minorities and the impulses of political elites

Slovenia reflects several ambiguities in terms of its minority regulation despite having a positive image in the international community. The first represents a gap between the normative framework and the actual situation, while the second denotes unequal normative positions for minorities in the territory. These ambiguities have been repeatedly identified by authorities in the field (e.g. Šumi 2004; Komac & Zagorac 2002; Šušmelj 2008) and have endured throughout Slovenia's independent statehood.

Komac and Zagorac (2002: 107) divide the non-Slovene minority population in the country into two groups: historic/traditional national minorities and modern (ethno)-national communities. The first group includes the Italian, Hungarian and to a degree the Roma communities, while the second encompasses individuals who belonged to the nations of the former SFRY. The term 'modern' represents a relatively recent economic migration to Slovenia from the former SFRY during its existence. Somewhat in between is the German national community, which virtually evaporated after the Second World War due to its role in it, but was showing signs of revitalisation in the late 1980s. An immense drawback for the German minority was also property claims that followed demands to preserve language and culture (Komac 2002: 13). If we disregard Germans from the divisions, the official number of members of the first group is 13,860 (11,567 without Roma minority), while the size of the second group is significantly larger (222,321, with Croats, Serbs, and Bosniaks making up the largest groups) (ibid.).

The constitutionally recognised division between autochthonous and non-autochthonous is the one that separates one group from another. Although it introduces the adjective autochthonous, the Slovenian constitution remains silent in its definition (Komac & Zagorac 2002: 107) as well as lacking a consistent designation of the status to particular minorities (Kržišnik-Bukić in Šušmelj 2008: 27). According to official documents, the status of autochthonous is reserved for the Italian and Hungarian national minorities on the basis of the 1974 Constitution of the Socialist Republic of Slovenia, while the Roma minority was granted the status in 1991. The status of non-autochthonous is 'reserved' for members of the Albanian, Bosniak, Montenegrin, Croat, Macedonian, and Serb communities,⁵⁶ which is consistent with

⁵⁶ The Albanian, Bosniak, Montenegrin, Croat, Macedonian, and Serb communities are frequently portrayed as a group in Slovenian expert discourse on minorities and denoted by the acronym ABČHMS (e.g. Klopčič et al. 2003). This rationale also corresponds to the common pejorative remark

Komac's category of modern national minorities. The latter is far more politically correct since it negates the absence of an autochthonous 'quality' as well as removing the frequently pejorative application of the term 'immigrant' (Komac & Zagorac 2002: 109). This calls attention for the Slovene population to acknowledge the non-Slovene ethnic population.

The division between autochthonous and non-autochthonous has also entered political and professional discourse about the Roma minority since a certain part of the Romani population immigrated into Slovenia as part of economic migrations after the Second World War, in parallel with the other modern national minorities (Janko Spreizer 2004). As a consequence, the Roma minority's 'political' capital has decreased significantly since primarily nationalist political elites took advantage of this artificial division of the Roma community which lacks legitimacy in professional circles (ibid.).

As a result, Komac (2002: 14) identifies three different models of minority protection for three distinct types of minorities. The first is the relatively integral legal protection of historic/traditional national minorities, which in addition to constitutional provisions encompasses around eighty legislative acts and regulations concerning various aspects of the minority's existence. The second model is represented by a selective scope of provisions for protection of the Roma minority, while a third represents a rudimentary approach to nurturing the national identity of modern national minorities and German national community since the Slovenian constitution remains blind to the latter. The only constitutional rights the modern and German minorities may refer to are related to expressions national affiliation and the uses of language and script (ibid.).

Although it is possible to state that the second model of minority protection (the Roma minority) increasingly resembles the first, vast differences remain. The Italian and Hungarian communities are the only two minorities with the official status of national communities since the Roma community does not enjoy the same status. They are recognised as special communities or a minorities with special ethnic characteristics (language, culture, and other ethnic specificities; ONM 2010). According to art. 64 of the constitution, the Italian and Hungarian national minorities irrespective of the number of members enjoy certain rights not entirely available to other minorities.⁵⁷ Roma special rights meanwhile are guaranteed in art. 65 of the constitution, which confers a mandate upon the legislator to provide special

južnjaki [southerners] to designate these members of 'modern' minorities. The term is frequently used in nationalist political discourse as well as colloquial language.

⁵⁷ The right to use national symbols; to establish organisations to preserve national identity; to education and schooling in its own language; to foster relations with its nation of origin; to establish its own self-governing communities; to be directly represented in representative bodies of local self-government and in the National Assembly; and to veto laws, regulations and other acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively. National minority rights (e.g. using Italian and Hungarian as official languages, having local councillors, and enjoying dual electoral rights) generally apply to regions of their autochthonous settlement, but also retain some of them outside the area.

statutory rights. Special protection for the Roma community was initially provided in sector-specific acts despite frequent calls for an umbrella act by various organisations (e.g. the Human Rights Ombudsman) (ONM 2010), which was expected from the phrasing in the constitution. The umbrella act was eventually adopted in 2007 and it integrally regulates the position of the community, its organisation and funding. However, it primarily addresses the most contagious issues of the Roma community: education, integration to the labour market, nurturing the language and cultural activities, and living conditions. Although the institutional framework provides a variety of mechanisms to improve the situation of the community (e.g. the Special Commission of the Government of the RS for Protection of Roma Community), Roma-oriented policies remain inadequately implemented. According to Horvat (2010) there are vast differences in implementation of measures across the country, which stems from the level of integration of the Roma community into the general population as well as the level of tolerance in the society at large. Positive results from the Pomurje region correlate with the fact that Pomurje has been historically known as a multi-ethnic environment where the Hungarian national minority is also situated (*ibid.*). In contrast, the Dolenjska region is pervaded by hostile actions towards the minority (e.g. unwillingness to introduce Roma municipal councillors, xenophobic civil initiatives, an incident of ethnic segregation of Roma pupils in primary school Bršljin, and a bomb attack on Romani school-assistant).

Slovenia frequently attempts to portray its minority protection regime as exemplary (e.g. ONM 2010; Šušmelj 2008; Šumi 2004; CHR 2006). However, barring the cases of the Italian and Hungarian minorities, the Commissioner for Human Rights and the Human Rights Ombudsman of the RS frequently report on discrimination outside these groups.⁵⁸ Most frequently disputed is the division between autochthonous and non-autochthonous minorities, which primarily excludes groups of individuals originating from other parts of the former SFRY and certain groups of Roma on a rather arbitrary basis (CHR 2006). Even autochthonous groups of the Roma minority attain only a limited degree of the rights guaranteed to the Italian and Hungarian national minorities. The Roma and the 'modern' minorities also experience(d) the problem of statelessness due to the 'erasure' and are frequently subjected to discrimination.

The Commissioner for Human Rights (*ibid.*) acknowledged the reluctance of the Slovenian government to strengthen the degree of minority protection as well as a lack of a clear department within the administration to establish an ownership over policies concerning minorities. Furthermore, in her annual reviews Human Rights Ombudsman of the RS (e.g. 2007) identified parliamentary political parties that inflamed ethnic hatred and discrimination on an ethnic basis. The three most visible examples, all of them being at least in principle backed-up by the government(s), are

⁵⁸ As an indication, Petković (2008) reports vast discrepancies in allocation of financial resources by the Ministry of Culture for the cultural needs of minority communities. For example, in 2006, the Italian minority received 66 Euros per person, the Hungarian 50, while the Roma and 'modern' minorities received only eight and one Euro respectively.

the case of relocations of the Strojna Roma family, segregation on the basis of ethnicity in Bršljin elementary school, and unwillingness to permit construction of the first mosque in Slovenia, despite a sizable share (2.4 per cent in 2002) of the population being Islamic (ORC 2010). In first two cases the ministers for education and interior of the 2004-2008 centre-right government actively intervened in order to create unconstitutional and discriminatory practice, while the case of mosque was persistently articulated on the basis of prevention of terrorism, ruining the landscape, damaging the fresh water resources (as in the case of relocation of Roma family).⁵⁹ The ombudsman also reported on an emerging vigilantism triggered by populism, in one case (the forced relocation of a Roma family) even preventing the President of the Republic from entering family's estate by angry locals.

The cases presented here attest the significance of support or at least lack of condemnation of populist and chauvinist attitudes by significant part of primarily right-wing political elite. National Assembly deputies and governmental ministers frequently set terrible examples for the public that are then replicated against members of different minorities. Overall, the most frequently expressed concerns by the competent bodies relate to hate speech, discrimination against the Roma community and modern minorities, and discrimination on the basis of gender (HRO 2010).⁶⁰ Nevertheless, we may identify some positive shifts in the attitudes of the political elite, primarily left-wing, which are supported by the introduction of several progressive practices.⁶¹ The fruits of these endeavours have already been seen by the election of the first black mayor in Slovenia,⁶² the nomination of black, gay, and foreign nationals as candidates on elections to the European Parliament (EP) (ISSUU 2009), and the relatively high proportion of Slovenian female members of the EP compared to gender representation in other representative organs.

⁵⁹ Additional information about violations of antidiscrimination provisions is available in CHR (2003; 2006) and in the annual reports of Human Rights Ombudsman of the Republic of Slovenia.

⁶⁰ To give just a few examples of discriminatory attitudes: 1) as a joke, a right-wing deputy called for a mandatory inspection of gender for two opposition female deputies since they fiercely defended their stance (Lovec 2005); 2) a former vice-president of the National Assembly Sašo Peče publicly announced that he would never have coffee with a black person or homosexual (Elikan in Šimac 2008); 3) a nationalist deputy group prepared a poster promising a dance with machine-guns featuring the 'erased' in the premises of the Parliament (STA in Finance 2005); 4) the fiercely opposed idea of artificial insemination of single women by right-wing parties, which eventually succeeded in rejection on a referendum (Hrastar 2001); 5) a proposed revocation of citizenship to ethnic non-Slovene population by right-wing parties (Zorn 2008); and 6) a proposed higher taxes for ethnic non-Slovenes.

⁶¹ For example, a variety of mechanisms in the field of Roma protection, the initiation of pilot classes with limited amount of hours in the Serbian language, the introduction of intra-party and system-wide gender quotas (Fink-Hafner et al. 2011), and initiatives to confer minority status to modern minorities (RTVSLO 2010).

⁶² Peter Bossman became the first black mayor in Slovenian history by becoming a mayor of Piran, a municipality with a significant Italian national minority. In addition, the list of candidates of his party (the Social Democrats – the main governmental party) in that municipality had one of the highest shares of women candidates, which also supported one of the highest proportions of women city councillors (40 per cent) among Slovenian municipalities (OEO 2010).

The regulation of minorities and the treatment of their members reflects several distinct characteristics of the Slovenian citizenship regime. As identified above, Slovenia was constrained in its actions due to lack of support in the international community and it therefore ensured preservation of minority statuses and rights for previously recognised national minorities. In line with an initial liberal-mindedness stemming from constitution it also indicated a 'civicness' in minority regulation that was not implemented. As a result, the Roma and modern minorities face(d) discrimination, which is the outcome of normative provisions, deficient implementation, and hostile political and societal attitudes within the Slovenian nationalising polity. Nevertheless, Slovenia does not try to portray itself as the ultimate protector of minorities (hybrid model), but rather internationally pursues a 'civic' state model (Brubaker 1996), since it has continuously disregarded several institutions such as the Commissioner for Human Rights, the Slovenian Human Rights Ombudsman, the Helsinki monitor, and Amnesty International. In accordance with Brubaker (1996: 432), the Slovenian desire for a 'civic' state image has a dual rationale: international legitimacy⁶³ and minimum chances for the outbreak of state-threatening (ethno)-national conflicts since a high level of ethnic homogeneity supposedly prevents breaks between ethno-cultural nationhood and citizenship.

4 How Europe hit home

4.1 Citizenship, mobility and borders

In an era of intensified processes of denationalising citizenship (Bosniak 2001) ethnically conceived citizenship regimes with inherent aspirations to match conceptions of nationhood and citizenship seem to be under the most stress. The urge for economic integration to global markets and the reinforcement of the domestic market collides with nationalist aspirations for a one-nation-state. Slovenian left-right cleavage in terms of the nation from the late 1980s entailed just that. The left saw the nation just as a tool to reach economic integration and welfare, while the right perceived it as the ultimate stage of an ethno-cultural community enshrined in its own nation-state. For a nation with a relatively short period of statehood such processes, be they globally or regionally induced, present serious 'stress-tests' to identity and to the economy. The rights of free movement frequently caused intense disputes within Slovenian society both before and after EU accession.⁶⁴

⁶³ The civic model enjoys lower levels of international legitimacy since the hybrid model of minority rights is supported by majority relevant international organisations (Brubaker 1996: 433).

⁶⁴ Debates putting forward the 'national interest' habitually occupy the spotlight. Political and popular demands to protect Slovenian consumers, workers, companies and consequently citizens frequently avert possible investors and create counter-effects. Disgust is incomparably higher in cases of foreign investors originating from the territory of former SFRY (e.g. the case of the Croatian acquisition of the

When looking at free movement, major shifts in the mobility framework after independence originated in the EU integration processes. Slovenia assumed several obligations regarding a new border regime (primarily on its external EU borders) with accession to the EU, thus making the former inter-state border with Croatia the strictest border-control regime in the state.⁶⁵ Slovenia partially started to implement Schengen provisions on visas and illegal migrations policies with its accession to the EU on 1 May 2004, when Slovenian citizens started to enjoy the rights of EU citizenship. Slovenia entered the Schengen area on 22 December 2007, when it removed border-controls on its internal EU borders while increasing control on its external EU border with Croatia. Activists and academia warned of the negative effects of the Schengen regime to already discriminated against national communities from the former SFRY as their ties with their countries of origin became obstructed by 'Fortress Europe' (e.g. Pajnik & Zavratnik Zimic 2003).

The migratory trend identified on the basis of official statistics negates such fears since inbound and outbound migrations increased in the last decade (see Table 1). In addition, the bulk of the migratory activity remained within the 'traditional' framework since the majority of migrants came from former SFRY territory. Although the intensity of mobility increased, the original migratory path and its rationale remained the same. Some general rules may be identified on the basis of the official statistics: 1) the migration path between Slovenia and the other post-Yugoslav states is reciprocal (individuals coming to and departing Slovenia); 2) Slovenia is the net recipient; and 3) the dominant migration path for Slovenian citizens is oriented towards western Europe. Generally, citizens from the post-Yugoslav states represent the bulk of migration activity, while the dominant path for Slovenian citizens is still the West.

Elan ski company in the 1990s or the entry of the Serbian corporation Delta into Slovenian retail trade market).

⁶⁵ The most important migration path during the existence of the former SFRY traversed this border (Malačič 2006) and remained economically crucial even after independence.

Table 1: Inbound and Outbound migration according to Slovenian citizenship/foreigner status and country of origin/destination

		1995		2000		2005		2009	
		Citizens	Foreigners	Citizens	Foreigners	Citizens	Foreigners	Citizens	Foreigners
Inbound migrations	TOTAL	2191	3688	935	5250	1747	13294	2903	27393
	EUROPE	2112	...	849	...	1261	...	2505	26301
	Bosnia and Herzegovina	722	...	35	...	108	...	154	12921
	Croatia	757	...	162	...	214	...	476	1296
	Italy	48	...	57	...	96	...	227	280
	Kosovo	...	...	...	...	...	...	11	2650
	FYR Macedonia	51	...	39	...	29	...	69	3051
	Germany	127	...	241	...	318	...	503	193
	Serbia	252	...	99	...	166	...	237	3804
	Other European states	39	...	60	...	105	...	378	1795
Outbound migrations	TOTAL	776	2596	1559	2011	2077	6528	3717	15071
	EUROPE	687	...	1301	...	1720	...	3177	14528
	Austria	132	...	157	...	229	...	434	84
	Bosnia and Herzegovina	40	...	88	...	54	...	128	6584
	Croatia	133	...	138	...	201	...	499	670
	Italy	37	...	90	...	149	...	257	173
	Kosovo	...	...	...	...	...	...	17	818
	FYR Macedonia	11	...	17	...	25	...	43	1754
	Germany	194	...	348	...	451	...	658	139
	Serbia	66	...	77	...	97	...	218	2930
	Other European states	15	...	235	...	343	...	615	1263

Source: SORS (2010)

When considering economic migration, the question of quotas – a topic frequently related to the concept of ‘Fortress Europe’ – became quite flexible as a mechanism since it allowed for a potential increase to already high and rarely attained upper limits (MLFSA 2010). Analogously, the dynamics of illegal migrations show a deep decrease of such occurrences since 2000 (Peršolja 2010), thus making the ‘Fortress

Europe' thesis even less relevant. It is obvious that Slovenia has not closed itself to third country nationals due to stricter border-controls and Schengen regime. In parallel, expectations regarding the numbers of EU economic immigrants would come from Slovakia, Poland, Romania, and Bulgaria were not fulfilled, thus making fears about the creation of new modern minorities and a cutting-off of 'traditional' ties with the post-Yugoslav markets (Malačič 2006) unfounded.

We can draw virtually the same conclusions from the residence statistics since the number of issued permits (temporary and permanent) is constantly increasing. The main reasons for acquisition of permits are employment and family reunion, and the origins of applicants are predominantly the post-Yugoslav countries (Ministry of the Interior 2010).⁶⁶ A large share of residence permits is obtained on the basis of the right to family reunion, mostly for third country nationals from post-Yugoslav countries. 'Fortress Europe' and any negative effects of the Schengen regime have therefore been prevented by labour market demands and EU workers' rights (e.g. right to family reunion). These inclusive provisions have been compensated by more restrictive trends: 1) imposing language provisions (e.g. Medved 2007; Zorn 2009) to a primarily low-educated immigrant labour force (SORS 2010) and 2) introducing country-specific labour force regimes for third country nationals. The reduction of rights of migrant workers⁶⁷ became increasingly evident with emerging economic crisis since the system's indifferent monitoring institutions⁶⁸ favoured employers.

An example of the systematic reduction of rights is the regime for workers from Bosnia and Herzegovina, which derives from a bilateral agreement between Slovenia and Bosnia and Herzegovina in the field of social security and the absence such agreement in the field of employment. The first grants social security benefits only to permanent residence permit holders. This is a rare status among Bosnian

⁶⁶ The current share of permanent residents from the European Economic Area is less than 3 per cent (1,059 out of 38,715), while the share among the temporary residents amounts to 10 per cent (6,181 out of 61,540) (Ministry of the Interior 2010). More than two thirds of temporary residents acquired permits due to employment, while 26 per cent of temporary residents obtained the right due to family reunion provisions (Ministry of the Interior 2010a).

⁶⁷ The most obvious example is the labour force regime for Bosnian workers, who present the most substantial pool for Slovenian economy (Malačič 2006). In the first half of 2010 the national media reported on the abuse of migrant workers living in terrible conditions who were waiting for their salaries for several months. Workers, mostly from building construction sector, ended up empty-handed since the country-specific regime systematically reduced their rights and minimised employers' responsibilities. The majority of the deprived migrant workers had to fight for their rights from home since the loss of employment also meant leaving the country. The Ministry of the Interior later changed this practice, under provisions of extreme conditions that withholds provisions of the legislation, for the case of recent the bankruptcy of the construction company and the consequent redundancy of 345 migrant workers from Bosnia and Herzegovina (RTVSLO 2010a).

⁶⁸ The labour inspectorate blamed the lack of human resources and legal means; the Human Rights Ombudsman initially did not actively engage in the debate; and the workers' unions at first did not want to provide professional support on the basis of non-membership.

working migrants because of a requirement of five years' continuous residence.⁶⁹ The absence of a bilateral agreement on employment, which is currently in the process of long-standing negotiations,⁷⁰ allows the exploitation of migrant workers in terms of frequent 'commissions' to illegal middle-agents as well as eventual employers (Lukič 2010). The most crucial insight into the government's rationale is provided by a draft proposal for such agreement. According to a government representative (Malec in Aktiv 2010), the government proposes provisions for a 'selective migration policy', which would include elements of language proficiency and familiarity with Slovenian culture. Lukič (2010) reaffirms this discriminatory stance with an identification of provisions regulating the acquisition of citizenship since the agreement demands a six month break between two three-year work permits. Conveniently, the condition for a permanent residence permit is five years' continuous residence with breaks of up to six months allowed. Hence, migrant workers from Bosnia and Herzegovina are prevented from acquiring a permanent residence permit and consequently Slovenian citizenship.

The state's actions can be perceived as a counterbalance to trends of de-ethnicisation (Joppke 2003) generated by EU legislation and intense economic migration. Such actions clearly indicate a wish to keep working migrants outside the borders of the political community – as *Gastarbeiter* – and reinforce the nationalist portrayal of modern minorities as a temporary phenomenon. An indication of the ownership of the polity by a dominant group is therefore perfectly clear.

4.2 The Europeanisation of Slovenian citizenship

The Slovenian citizenship regime was significantly altered by EU accession. In a symbolic sense the most important change was the re-introduction of a two-tiered citizenship regime, though this was much more transparent in terms of primacy when was the one from the former SFRY.⁷¹ In addition to the new rights for workers (e.g. free movement, family reunion) a tranche of important citizenship rights became available to Slovenian citizens as well as to the previously less protected categories of individuals. Although some of the EU-15 Member States imposed restrictions on the free movement rights of workers,⁷² the most important changes were felt in the areas of political rights and identity. The latter did not have the expected impact – that is, Slovenes identifying themselves as EU citizens – which is still at the level of identifying as global citizens (Deželan et al. 2007), but primarily

⁶⁹ The same condition is in force for Macedonian workers, while Croatian workers and those from states without bilateral agreements enjoy fewer restrictions (UVI in Moja Zaposlitev 2010).

⁷⁰ Delo (2010), 'ZSSS: Država predolgo rešuje problematiko tujih delavcev'. <http://www.delo.si/clanek/114565>, 12 November 2010.

⁷¹ For an extensive elaboration of the citizenship of the European Union and its relation to national citizenship see Shaw (2007; 2010).

⁷² Expectations regarding an increase of working migrations proved unfounded. Delo (2009), 'Omejitve še v Avstriji in Nemčiji'. <http://www.delo.si/clanek/80088>, 11 November 2010.

meant as a benchmark of advancement in comparison to citizens of post-Yugoslav states.

In addition to some other rights (see Shaw 2007), European citizenship also presented voting rights for elections to the European Parliament (EP) for Slovenian citizens. EU citizens resident in Slovenia acquired the right to vote and stand for the EP and in local elections (excluding standing for mayor), which presented a major shift in the definition of the political community. As a spill-over effect, the left-wing government granted the right to vote, but not to run for office, in local elections third country nationals – an alleged proof of the democratic advancement of Slovenian society for political elite (Deželan 2007). The actual effect of the non-citizen vote on the local level proved to be very marginal (*ibid.*), but it nevertheless enabled previously excluded categories to participate.⁷³ Although it presented a serious dint in the nationalists' agenda, the shift was in fact balanced with the tightening of provisions for third country nationals for the acquisition of permanent residence and citizenship. Nevertheless, the political right to participate in an arguably supranational political community (as in the EP vote) generated several additional positive novelties into the system: 1) an introduction of an 'irregular zipper' system and gender quotas for lists of candidates (see Fink-Hafner et al. 2009); 2) the progressive composition (experimentation) of lists of candidates (the first black, non-citizen, and gay and lesbian candidates); and 3) a high share of women MEPs.

There is a widespread belief that European integration did not have a profound effect on the Slovenian citizenship regime primarily due to occurrences pertaining to the 'erased' as well as the disregard for modern minorities. If we simply operate Europeanisation as a process of 'Europe hitting home', without going into detailed debates about the exact meaning of the term and its relation to harmonisation and convergence (see e.g. Boerzel & Risse 2000), we may identify several hallmarks that negate the thesis and prove Europe as the important factor in (re)definition of Slovenian citizenship regime.

Europe had a profound effect on the Slovenian independence process since the reformed communists – Party of Democratic Reform – focused on Europe when drafting a platform to redefine Slovenia's position in the former federation (Kučan 1990). After independence European integration processes and specifically joining the European Union became the overarching political goals of the newly established polity, which generated virtually the only consensus among political parties.⁷⁴ Therefore, Slovenia as well as its politicians envisioned Europe as a core political project, which was evident from their discourse since the adjective 'European' always denoted something good, democratic, and worth aspiring to. The adjective

⁷³92 per cent of non-citizens with local level voting rights were citizens of post-Yugoslav states (Deželan 2007).

⁷⁴ The consensus among political parties was agreed and signed with the Agreement on Co-operation in the Accession Process with the EU in 1997 (Fink-Hafner & Lajh 2008: 38), which later inspired similar attempts when national cohesion was of utmost importance (e.g. the Slovenian Presidency of the EU).

'Balkan' (as Balkan-like) meanwhile had a diametrically opposite meaning and was usually employed to portray something rotten, undemocratic, and uncivilised. In that respect joining the EU meant a cultural leap from something supposedly 'rotten' to something supposedly 'heavenly' to which the nation belonged.

As a result of Europe being the highest goal, Slovenian politicians were prepared to pay a high price for EU accession. European Communities and other influential western states in the international community (e.g. the USA, Germany, and neighbours Italy and Austria) actually influenced the initial determination of the citizenship regime since Slovenia wanted to provide an image of a democratic polity so as to be internationally recognised (Krivic 2003; Mencin Čeplak in Mekina 2002). However, when applying for EU membership, Slovenia needed to provide detailed plans for reforms and not just declarations and statements. The European Commission (EC) had already demanded a number of actions to put the membership application forward in Agenda 2000 (1997). It explicitly pushed for the ratification of the Framework Convention on the Protection of National Minorities or the signing of the European Social Charter, a reduction of slow judicial proceedings, the abolition of certain discriminatory practices in the labour market, and the need to regulate the status of refugees. It also pressed for actions to resolve problems about the population later known as the 'erased'. In its first regular report, the EC (1998) established that the Council of Europe's Framework Convention for the Protection of National Minorities was ratified along with ratification of charter on minority languages, an act establishing the temporary status of refugees was adopted, as was an amendment to the constitution. However, the problem of the 'erased' remained as did poor conditions regarding the Roma. Revisions of the Aliens Act also needed attention. Hence, we can observe the visible and influential role of the EU, which repeatedly demanded action in these problematic areas. In its next report the EC (1999) acknowledged the adoption of new legislation regarding the 'erased' (ARLSC), asylum, and the revision of Aliens Act, however, it demanded that attention to the representation of women and the denationalisation problem. Again, it is evident that EC and consequently the EU played an important role in evolution of the Slovenian citizenship regime. In 2000 the EC (2000) again acknowledged the resolution of the 'erased' and temporary refugees questions as well as noticing the adoption of legislation concerning the equal treatment of men and women, the signing of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the ratification of the European Social Charter, and several new provisions regarding the Roma. It continued in a same manner throughout 2001, 2002, and 2003 when the EC pressed for the ratification of human rights legislation and the resolution of the 'erased', temporary refugees, and the Roma. Slovenia provided evidence of its advancements. Therefore it is very difficult to deny an active and influential role of the EU when looking at these questions.

Nevertheless, it must be noted that other institutions reported on the unreadiness of the Slovenian government to cooperate (e.g. the Commissioner for Human Rights (CHR 2006); UN representatives (EC 2000)). This was a common

practice since Slovenia frequently acts as a true rational-choice player (e.g. Fink-Hafner et al. 2010). Slovenia prioritised the EU above other international organisations. Hence, the accession period provided a window of opportunity to resolve contentious issues and introduce progressive principles. This is evident when looking at the post-accession period, actually starting with pre-election period of 2003, when political parties took control of the issues by putting forward nationalist and populist agendas. Various consequent attempts to call on the European Commission to address the Slovenian government on its actions in the field of human rights⁷⁵ should also be put into that context.

The post-accession period highlights a less active role for the European Commission, which started with the final monitoring report of the on the state of Slovenia's preparedness for EU membership (COM 2003/675) and consequent loss of its most powerful tool of persuasion – the ability to control the accession process. The exposed problems were also ignored also by the European Parliament, which on the basis of reports of special rapporteurs (A5-0111/2004) reinforced the Commission's lack of dedication to solving the problems. After accession, the European Commission took a stance of 'lack of competence' and instructed complainants to seek justice at the European Court for Human Rights (Drčar Murko 2010). Certain political groups in the European Parliament (e.g. GUE-NGL) and individual MEPs, usually of Slovenian origin and not from the parties in the national government at the time, have attempted to call attention to problems of the 'erased' and the Roma, but with no significant effect. However, with the accession the role of the Court of Justice of the European Union became increasingly relevant to the Slovenian citizenship regime since its case-law significantly shaped the conception of EU citizenship as a transnational citizenship (see Shaw 2010). Although it is difficult to discern effects of individual institutions, the role of the EU during the accession and afterwards enriched Slovenian democracy with spill-over effects in various fields, for example, with very progressive equal opportunities policy in politics such as the quota system (Fink-Hafner et al. 2009) and very inclusive local electoral system that incorporates third country nationals (Deželan & Lajh 2007).

Conclusion

On the basis of the aspects of Slovenian citizenship regime analysed here we may revisit our initial argument. It becomes clear that the genealogy of the Slovenian citizenship regime is pervaded by conflicting (ethno)nationalist and libertarian agendas. The ethno-cultural conception of Slovenian nationhood had a severe impact on Slovenian citizenship, which was also expected since a substantial part of the state-building political elite had a clear (ethno)nationalist agenda. The right-wing

⁷⁵ E.g. MEP Drčar Murko's question to the European Commission and other opposition MEPs' activities to inform the European public about malpractice in the Slovenian government regarding the Roma and the 'erased' (Drčar Murko 2010).

elite also continually pressed for an undisputed ownership of the polity by the dominant Slovenian nation. The rationale of the protection and promotion of the Slovenian nation was nevertheless promoted by the entire political elite since several state ministries and offices declared a special concern for the Slovenian nation and its descendants and acted accordingly. It is true that these nation-promoting activities were much more diffuse than state-seeking nationalism prior to independence, but the practices (formal policies and informal practices, within and outside the state) attest the presence of a widespread idea of Slovenia as the state of and for the Slovenian (ethno-cultural) nation. Examples that make such conclusions very clear are the constant pressures to introduce stricter language proficiency provisions into processes of acquisition of various legal statuses; the very negative stance to dual citizens, in particular the 'post-Yugoslav' subgroup (while, on the other hand, encouraging ethnic Slovenes abroad to acquire a second, Slovenian citizenship); the reluctance for providing conditions to accept and integrate refugees; the disregard for vast number of individuals belonging to 'modern' minorities, and the shameful provisions for migrant workers from non-EU states.

The role of the state in these discriminatory practices is also clear and harmful. Under the influence of populist provocations and demands of the masses, state institutions allowed the introduction of policies that were in clear contradiction with some of the standards and promises expressed in the constitution and in the statements of good intent. Though we have identified some of the questionable formulations in the constitution and in the primary legislation, it is above all the activity of state institutions and agencies in conditions of *lacunae legalis* that proved vital. The state bureaucracy, evidently under the 'guidance' of politics, disregarded some fundamental principles of humanity in implementing its competences as well as neglecting the implementation of certain provisions in favour of various disadvantaged groups. In that sense, we are certainly able to talk about constitutional nationalism as presented by Hayden, but with special attention to the state administration and the executive branch: the state bureaucracy easily and quickly absorbed the chauvinist attitudes of parties in government on several occasions.

Nevertheless, we may identify two periods in short history of Slovenia as an independent state that attest to a very libertarian posture which is distinctive of the civic state model. The first was the period of preparing for independence and building support for international recognition. Slovenia introduced several mechanisms vital to its democratic character in that period, many of them out of a desire to gain the support of the international community. The second was during EU accession, which also proved to be significant in eliminating several discriminatory practices towards minorities, stateless persons, and women. Although not entirely successful in eliminating discriminatory practices, these reforms significantly improved Slovenia's international image. The external environment therefore provided the impetus needed for introduction of these reforms since it was only external pressure that managed to shape consensus among the political elites.

This rationale is evident by the nationalist backlash that followed both periods (1993-1996 and the post-accession period).

As a result, we may indisputably consider Slovenian citizenship as a concept of membership in a 'nationalising state', which is dominated by the principles of an ethno-cultural conception of nationhood primarily promoted by a right-wing political elite and constrained by its integration into the European Union and the wider international community.

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